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March 24, 2004

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Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**Re: National A-1 Advertising, Inc. Petition for Reconsideration
Docket No. 04-00062**

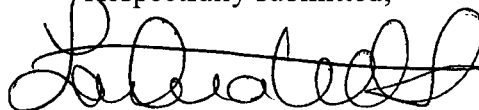
Ladies and Gentlemen:

On behalf of National A-1 Advertising, Inc. ("National"), transmitted herewith is an original plus thirteen (13) copies of its Petition for Reconsideration and Expedited Reconsideration in the above-reference docket. Also enclosed is a check in the amount of \$25.00 for the fee associated with this filing

An additional copy of this filing is also enclosed to be date-stamped and returned in the postage prepaid envelope provided.

Should there be any questions regarding this filing, kindly contact the undersigned.

Respectfully submitted,



Loubna W. Haddad

cc: Service List

PAID T.R.A.

Chk # 10462

Amount 25.00

Rcvd By HR

Date 3-25-04

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T.R.A. DOCKET ROOM

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**Before the
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TN**

In the matter of)	
)	
National A-1 Advertising, Inc.)	Docket No. 04-00062
Petition for Reassignment of)	
Abbreviated Dialing Code 211 to 811)	

**PETITION FOR RECONSIDERATION
AND EXPEDITED CONSIDERATION**

COMES NOW, National A-1 Advertising, Inc. ("National"), by its attorneys and pursuant to T.C.A. § 4-5-317 and Rule 1220-1-2.20 of the Rules of Tennessee Regulatory Authority, and seeks reconsideration of the Tennessee Regulatory Authority's ("TRA") decision denying National's Petition for substitution of Abbreviated Dialing Code ("ADC") 811 for 211 (hereinafter "Petition"), the latter ADC being activated by the United Way of Metropolitan Nashville ("United Way"). Expedited consideration of this petition for reconsideration is required because of the short time frame created by United Way's desire to activate its use of 211 by May 1st, 2004.¹ In support of National's request for reconsideration on an expedited basis, the following is shown:

1. At the TRA's March 22, 2004 Conference, the Directors denied National's Petition for several reasons.² The primary reason National's Petition was denied was the Directors' views that the ADC 811 is being considered for national assignment by the

¹ The TRA's Rules of Practice and Procedure, as well as T.C.A. § 4-5-317, allow a party 15 days after entry of an order to petition for reconsideration. In this case, because of the extremely short time frame involved, National is filing its petition for reconsideration prior to release of the TRA's Order memorializing its action of March 22, 2004

² The transcript of the meeting is not yet available, but counsel has been informed by reliable sources that the reasons cited herein are accurate representations of the factors upon which the Directors based their decision.

Federal Communications Commission (FCC) for use by those agencies or organizations that monitor and advise on the location of buried lines used by water, electric, gas, communications and other companies.³

2. Another ostensible reason believed to be a basis for at least one Director's concurring vote was that that Director had voted against the original assignment of the 211 ADC to National's affiliate, National Telephone Enterprises, several years ago

3 Neither of these factors justifies the TRA's denial of National's Petition and, indeed, they are contrary to law, clearly erroneous and in violation of established federal policy.

4. First, the Federal Communications Commission ("FCC") exclusively controls and regulates the assignment of these ADCs. 47 U.S.C. § 251(e)(1) (The FCC has exclusive jurisdiction over "those portions of the North American Numbering Plan that pertain to the United States."). In assigning these ADCs for public purposes, the FCC explicitly recognized that its determination to prioritize the use of these codes for public purposes as opposed to allowing their continued availability for either commercial use or the use by local telephone companies for repair and maintenance calls, was not intended to and did not prohibit the continued use of the ADCs by commercial enterprises like National. The FCC expressly ruled that until a bona fide request was made and the capability to activate any specific ADC was shown by the requesting designated public body, these ADCs were to remain available for assignment and use by commercial enterprises. *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Second Report and Order, 15 F.C.C.R. 15, 188, ¶ 5 (August 9, 2000)

³ Popularly referred to more commonly as the "Call Ms. Utility" or "Call Before You Dig" service

(hereinafter “Second Report and Order”) (“N11 Codes that are not reserved by the Commission may generally be used by states or carriers at their discretion, until the Commission reserves them, at which time they must no longer be used for inconsistent purposes.”).

5. The facts are that the 811 ADC has not been designated for any public use at this time. When, and even if, 811 will be so designated cannot be determined and hence the mere possibility that such designation may be made is not a legal basis to deny National’s use of that ADC.

6. Moreover, once the 811 ADC is designated, if and when it is, it will only be designated on a national basis. This national designation does not, however, mean that the ADC cannot continue to be used for commercial purposes. National’s rights to use the 811 ADC are not affected by the simple national designation of the 811 for calling to locate buried lines. As the FCC’s rules provide, once a code is designated for a priority public purpose it remains available for commercial use until a designated entity applies for and is granted authorization to activate the designated ADC. *See, e g , In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, First Report and Order and Further Notice of Rulemaking, 12 FCCR 5572 (Rel. Feb 19, 1997), overturned on other grounds, (In discussing a request for assignment of 311 for non-emergency policy service, FCC affirms that “wherever 311 is currently in use for other purposes, however, we would allow that use to continue until the local government in that area was prepared to activate a non-emergency 311 service.”); *see also generally* Second Report and Order. Even then, the FCC rules provide that the commercial user has a grace period of six months to find a substitute ADC or other number.

7. Since the ADC 811 has not yet been assigned by the FCC for any purpose, the TRA's determination to deny National's use of 811 is therefore in violation of the FCC's policies and rules on ADCs and National's rights as established thereby, and hence is *ultra vires*, unlawful, in derogation of the rights of National and the public it serves and must be reversed. See T.C.A. § 4-5-322(h) ⁴

8. It is understood that one of the votes against granting the Petition was based on the desire of consistency. Having voted against the use of the ADC 211 when originally sought, it was believed that for purposes of maintaining consistency in policy, it was incumbent to vote against allowing the 811 ADC to be substituted for the 211 ADC. While appreciating the value of consistency in regulatory policy, in this case the facts support the exact opposite action than that which was taken.

9. When the original request for 211 was granted, no service was then being provided using that ADC in Nashville. Once granted however, 211 was employed to provide a telecommunications service to the public at large in the Nashville area. Denial of the use of 811 as a substitute ADC would mean that service to the public would be discontinued and National's business of providing that service ruined. The TRA does not have the authority to order, nor does BellSouth Telecommunications, Inc. ("BellSouth")

⁴ Section 4-5-322(h) provides in relevant part as follows:

The court may reverse or modify the decision [of an agency] if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure,
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5) Unsupported by evidence which is both substantial and material in the light of the entire record.

....

have the right to act to discontinue a telecommunications service when the user of that service, and the public the user serves through that service, has a continuing need for it. Indeed, were BellSouth to act on the TRA's decision and take National's service away, it would be in violation of the Communications Act of 1934, Section 214.⁵ *See* 47 U.S.C. § 214(a) ("No carrier shall discontinue, reduce, or impair service to a community, or party of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. . . .").

10. Under these circumstances, to maintain consistent regulatory policy, the TRA must vote to ensure the continuation of existing service. The only way this consistency may be achieved is to reconsider its denial of National's Petition and grant National the use of ADC 811 in place of ADC 211. National fully understands that if ADC 811 is eventually assigned for excavation purposes, it may need to seek yet another ADC or other access device to continue its services. But National will not face that necessity unless a qualified entity actually seeks use of the ADC 811 in Nashville. Even then, National will have six months after an actual grant of such usage to find another substitute.⁶

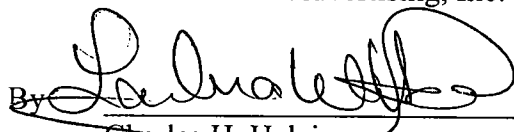
⁵ National filed a Formal Complaint against BellSouth on this and other points when a solution was not worked out for continuation of National's service using a substitute ADC in Florida. *See In the Matter of National A1 Advertising, Inc., et al v BellSouth Telecommunications, Inc., FCC File No EB-02-TC-F-003* National's complaint was dismissed without prejudice when the parties agreed that the 811 ADC would be substituted for the 311 ADC that had been activated by its designated entities. As part of that settlement agreement between National and BellSouth, BellSouth has a contractual duty to provide a viable substitution of any ADC claimed by a designated entity in Tennessee as it has in Florida and all of the BellSouth states.

⁶ National provides its services in other states. Its experience is that the assignment of an ADC for a designated public use does not result in the loss of its rights to continue

11. Time is of the essence. National worked diligently with the United Way and BellSouth to ensure that National's transition to 811 from 211 would be done in a timely manner so that the public in Nashville would be fully advised of the change in the use of the 211 ADC and be apprised of the need to dial a new ADC to receive National's service. The denial of National's Petition now threatens the implementation of the mutual arrangements agreed to by the principal parties. More importantly, the denial threatens a substantial delay in the United Way's ability to activate the 211 ADC as National now faces the prospect of having to institute other actions to protect its business and the public's right to receive its services. Such actions would not serve the true public interests that are involved.

12. The foregoing premises being duly considered, National requests that the denial of its Petition to substitute the 811 ADC for the 211 ADC be reconsidered and that the Petition be granted as filed. Because of the extremely short time frame involved,⁷ it is necessary that expedited action be taken to provide the relief National seeks herein.

Respectfully submitted,
National A11 Advertising, Inc.

By 
Charles H. Helein
Loubna W Haddad
The Helein Law Group LLP
Its Attorneys

to use that ADC for an indefinite period of time. This is because the activation of an ADC by a designated entity is expensive and technically difficult and hence although such ADCs are assigned, many simply are not activated. In such circumstances, National's ability and right to continue use of the ADC is undiminished.

⁷ National, United Way and BellSouth have agreed that announcements on the changes in the use of the ADCs would begin April 1, 2004. Industry practice is that such announcements precede any changes in use of codes by at least 30 days.


Certificate of Service

I, Sherry Reese, do hereby state and affirm that copies of the foregoing "Petition for Reconsideration," have been served this 24th day of March, 2004, in the manner indicated, upon the following:

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(Via Overnight Courier)

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BellSouth Telecommunications, Inc.-Tennessee
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Sherry Reese, Legal Secretary